



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,168	11/25/2003	Wayne L. Pratt	2965.906US03	7515
24113	7590	01/04/2011		
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			EXAMINER	
			LEE, KEVIN L.	
			ART UNIT	PAPER NUMBER
			3753	
		MAIL DATE	DELIVERY MODE	
		01/04/2011	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/722,168	Applicant(s) PRATT ET AL.
	Examiner KEVIN L. LEE	Art Unit 3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 October 2010.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24,30 and 31 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-11,13-22,24,30 and 31 is/are allowed.
- 6) Claim(s) 12 and 23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

This Office action is responsive to communication filed October 12, 2010.

Specification

After a further review of the history of the prosecution of this case, it is noted that page 5 is missing in the amendment to the specification filed November 25, 2003.

Reissue Applications

Claims 12 and 23 are rejected under 35 U.S.C. 251 as being based upon new matter added to the patent for which reissue is sought. The added material which is not supported by the prior patent is as follows:

Newly added claims 12 and 23 call for "... the internal volume chamber is fluidly coupled with the atmosphere through a weep hole" (emphasis added). Nowhere in the original disclosure is the chamber explicitly or implicitly disclosed to be fluidly coupled with the atmosphere through a weep hole. The original disclosure recites in col. 3, lines 9-14 "A weep hole ... to the space between two diaphragms. This along with a radial canal just outside the diaphragm seals, provide a means of detecting a leak in the primary diaphragm." This passage suggests that the weep hole is fluidly coupled to a leak detecting means as opposed to the atmosphere. In fact, in claim 1 (limitation (h)) for application 09/556,208 dated 10-27-2000, this claim requires optionally connecting a detector to the weep hole. Therefore, contrary to the presently recited claims 12 and 23,

the original disclosure suggests fluidly coupling an internal volume chamber to a detector via a weep hole rather than the atmosphere.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation in the above claims of the internal volume chamber being fluidly coupled "with the atmosphere" through a weep hole is considered to be new matter not disclosed in the original specification as discussed in the above paragraphs.

It is noted that the above rejections were first made in the Office action mailed July 12, 2010 and that applicant failed to address these rejections in the response filed October 12, 2010.

Allowable Subject Matter

Claims 1-11, 13-22, 24, 30 and 31 are allowed.

Response to Arguments

The objection to claims 1-10 for not including the listing of the pending claims is moot in view of applicant's amendment filed October 12, 2010 that included a listing of all of the pending claims, include status identifiers for each claim.

In view of applicant's persuasive arguments, the request for applicant to re-submit those portions of the amendments which had previously been amended, in unamended form has been reconsidered and is hereby withdrawn. Furthermore, since all proposed drawing amendments were withdrawn by instruction in the amendment filed October 9, 2007, the objection to the drawing changes as set forth in the Office action mailed July 12, 2010 is withdrawn.

The objection to the amendment filed on November 25, 2008 as not being in the form required by 37 CFR 1.173 (b) is withdrawn in view of applicant's re-proposing the subject specification amendments in the amendment filed October 12, 2010.

The prior rejection of claims 11-24, 30 and 31 under 35 U.S.C. 251 for attempting to recapture subject matter surrendered during original prosecution has been reconsidered and is hereby withdrawn in view of applicant's persuasive arguments.

After careful review of the amendments filed on November 2, 2009 and October 12, 2010, it is agreed with applicant that no substantive amendments have been made to the subject application after the last full reissue declaration signed by the inventors on November 25, 2008. Accordingly, the requirement for a new supplemental reissue oath/declaration is withdrawn.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN L. LEE whose telephone number is (571) 272-4915. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hepperle can be reached on (571) 272-4913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3753

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KEVIN L LEE/
Primary Examiner, Art Unit 3753